



POLICY TITLE EMERGENCY TAKEOVER OF FACILITIES

NO.  
10-01-01

Legislative Authority

the Environmental Protection Act  
the Ontario Water Resources Act  
the Pesticides Act

Statement of Principles

This policy addresses the problem of the inadequate operation of a waste disposal, waste treatment, or other facility by its owner. Normal procedure is for the Ministry to issue an Order directing that necessary work or operation be carried out. When an Owner is unable to carry out the Order, the Ministry must prepare for emergency takeover of the facility.

1. Ministry Abatement  
Policy for Emergency  
Operation

1.1 Scope of Abatement

This policy relates to waste disposal sites, waste management systems, sewage systems, sewage works, water works, and other potential sources whose inadequate operation may lead to environmental or health hazards.

November 12, 1986

Point of Contact

Operations Co-ordinator, Operations Division

Effective Date

April 18, 1980

**1.2 Notification of Ministry**

The provisions of the Environmental Protection Act, the Ontario Water Resources Act and the Pesticides Act require any person or company who allows the deposition of any contaminant in excess of approved standards to notify the Ministry of the Environment. This should ensure the Ministry's early knowledge of the existence of the problem.

**1.3 Repair of Injury**

Section 17 of the EPA provides that where any person causes or permits the addition of a contaminant to the natural environment, the Minister may order that person to repair the injury or damage so caused. Other sections give similar powers to the Minister or a Director. In case of default, the Minister under Section 143 may order that the first order be carried out at the expense of that person and may sue for any expenses.

**1.4 Powers of Minister**

The Ontario Water Resources Act and the Pesticides Act provide similar powers to the Minister.

**2. Abatement Program Development Process**

**2.1 Conditions Leading to Emergency Takeover**

Where it is apparent that a company or a person is not satisfactorily operating a waste disposal site, treatment facility or any other potential source whose inadequate operation may lead to environmental or health hazards and indicates no intention to do so, the Ministry must immediately prepare itself to take over the operation of such a facility.

**2.2 Preparation by Ministry**

As time is of the essence, the steps indicated below should be taken promptly.

**2.2.1 Project Manager**

The Regional Director should immediately appoint a Project Manager and a project management schedule should be drawn up for a possible takeover of operations.

2.2.2  
Request for  
Municipal Operation  
of Facility

In the case of privately owned sewage and water works, the Regional Director, as a first step, should request the Municipality to take over the operation of the facility. Section 33, OWRA, provides the legal basis for this step. "Privately owned", as used here, does not include non-communal works referred to under Part VII, Section 62 of the EPA.

2.3 Ministry Orders

For other works, or where 2.2.2 above does not succeed, the abatement process will consist of the following steps:

- (a) The Ministry will prepare and issue an order requiring the company, municipality or person to operate the facility.
- (b) Any appeals emanating from the order will be dealt with. In case of urgency, a Stop Order, or Minister's Order, which comes into effect immediately (Sections 7, 16 of the EPA) should be used. A Minister's Order, referred to in 2.4 following, is not effective until the Order on which it is based becomes enforceable.
- (c) The order will normally be registered on title against the property in question.

2.4 Inaction by Owner

If, at this, or any earlier stage of the process, it becomes apparent or likely that the owner is unable or unwilling to operate the facility, or to carry out required remedial measures, or the owner cannot be located, and any of these cause, or are likely to cause an environmental or health hazard, then the following steps will be immediately taken:

2.4.1  
Minister's Order  
Sought

A Minister's order under Section 143 of the Environmental Protection Act, or Section 55 of the Ontario Water Resources Act or Section 32 of the Pesticides Act will be sought. This will enable the work to be done at the expense of the parties which were originally directed to do it, allowing the Crown to recover the cost of doing it by action in court as a debt due to the Crown.

The following work will have to be carried out for the Minister's order:

- (a) The Director will decide if and when the facility should be operated by the Ministry or contracted to an outside agency or person.
- (b) The Project Manager will prepare a detailed, itemized, estimate of the costs involved with operating, upgrading, and carrying out remedial measures as required.
- (c) The Project Manager will determine the terms of reference for the operation of the facility, upgrading, and remedial measures as required.
- (d) The Project Manager will consult with the Policy and Planning Branch on the necessary funding requirements.

2.4.2  
Assets Approved

The real property assets and other assets of the company or person within Ontario, should be appraised through the Realty Services Branch of MGS or through the Property Branch of MOT. Such appraisal should address the current market values and the present and potential value to the Province or other public authority of the land in question.

2.4.3  
Finances Reviewed

The financial situation of the company or person should be reviewed by the Management Audit Branch. This is to be arranged through the Corporate Resources Division.

2.4.4  
Order on Title

The Minister's Order is to be registered on title if applicable.

2.4.5  
Environmental  
Assessment Act

An exemption or approval will be sought respecting the Environmental Assessment Act if needed.

2.4.6  
Legal Action

The Director or Project Manager, in conjunction with the Legal Services Branch, will have legal action carried out by the Crown Law Office of the Ministry of the Attorney General for recovery of the funds spent. The surrender of ownership of the land to the Crown should be taken into account.

2.4.7  
Recordkeeping of  
Costs

Where monies or staff time are being expended, the Legal Services Branch should be consulted in advance to ensure appropriate records are kept for the purpose of evidence in case a law suit is required in order to recover costs.

2.4.8  
Writ of Execution

Following judgement usual legal proceedings for collecting debts will be followed, including issuing and filing Writs of Execution and instructing sheriffs to carry them out.

2.4.9  
EPA Part IX

Part IX of the Environmental Protection Act provides an additional vehicle for handling some of the situations covered by this policy.